

To: CN=Don Waye/OU=DC/O=USEPA/C=US@EPA[]
Cc: CN=Lynda Hall/OU=DC/O=USEPA/C=US@EPA[]
Bcc: []
From: CN=Stephen Sweeney/OU=DC/O=USEPA/C=US
Sent: Wed 10/3/2012 12:28:13 PM
Subject: Re: OR CZARA - renegotiation of the Settlement Agreement??
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Ex. 5 - Attorney Client

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From: Don Waye/DC/USEPA/US
To: Stephen Sweeney/DC/USEPA/US@EPA, Lynda Hall/DC/USEPA/US@EPA
Date: 10/02/2012 06:02 PM
Subject: OR CZARA - renegotiation of the Settlement Agreement??

FYI. Emphasis below in bolded blue is mine.

Note to Lynda: NWEA is Nina Bell's group. So, her pressure is unrelenting and her grasp seems to continue to expand. I know nothing about her legal actions against EPA on Oregon's temperature TMDLs beyond what I just read below.

Please read on.

----- Forwarded by Don Waye/DC/USEPA/US on 10/02/2012 05:57 PM -----

From: Jennifer Wu/R10/USEPA/US
To: Allison Castellan <allison.castellan@noaa.gov>
Cc: David Powers/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA, Jayne Carlin/R10/USEPA/US@EPA
Date: 10/02/2012 03:27 PM
Subject: Re: Drafting Dec Settlement Letter to ODEQ RE: TDMLs

I believe in some conversations I was in a couple of months ago, we had asked ODEQ to send us a progress update and a list of BMPs they intended to use in the beginning of October, which is now. It might be a good time for us to formally ask ODEQ about the schedule for the Mid-Coast TMDL, which I expect will then lead ODEQ to formally ask for a delay.

Just FYI to this group, as all of you may or may now know, NWEA is taking two legal actions against EPA

related to temperature TMDLs. We received an NOI last week, and a civil action was also filed at the US district court. I'm sure this will affect ODEQ's thinking on whether to do a temperature TMDL in the Mid-Coast. Those actions along with other concerns raised by stakeholders in the Mid-Coast TMDL make me think that there's a very high chance ODEQ will ask for a delay, which I assume would lead to a renegotiation of the Settlement Agreement. As far as where we're at in the TMDL program, Dave Croxton and I are going to be talking with Gene Foster about many issues, the new litigation, the Mid-Coast TMDL, and other specific TMDLs later this week or early next week, so I'll let you and/or Jayne know TMDL-wise if there's anything that appears to affect the OR CZARA agreement.

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-----Allison Castellan <allison.castellan@noaa.gov> wrote: -----

To: David Powers/R10/USEPA/US@EPA, Jayne Carlin/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA
From: Allison Castellan <allison.castellan@noaa.gov>
Date: 10/02/2012 11:47AM
Cc: Jennifer Wu/R10/USEPA/US@EPA
Subject: Drafting Dec Settlement Letter to ODEQ RE: TDMLs

All--

As you know, per the settlement agreement, we owe ODEQ (with cc to Plaintiff) a letter providing an initial assessment of the adequacy of OR's implementation-ready TMDL approach for meeting CZARA requirements by Dec. 31, 2012. According to the settlement agreement, the written statement must assess whether:

1. implementation of the IR-TMDL for the Mid-Coast Basin, including safe harbor BMPs, is likely to result in actions to achieve and maintain water quality standards, and
2. the IR-TDML plan to developing/updating TMDLs for all subbasins within the 6217 mgnt area could satisfy the outstanding additional MMs for forestry condition.

We are based our assessment on:

1. OR's July 2, 2010 AG's opinion
2. ODEQ's July 26, 2010 commitment letter
3. The state's schedule for implementing IR-TMDL's throughout the 6217 mgnt area (NOAA/EPA requests on Mar. 31, 2011; state provided July 2011)
4. Completed Mid-Coast Basin TMDL (requested by June 30, 2012; still under development)
5. Other documents

The settlement agreement also notes that EPA and NOAA shall consider any comments Plaintiff may have submitted with respect to ODEQ's proposed TMDLs and BMPs.

Since this will need to go through legal review and joint clearance at EPA and NOAA, we should start drafting that letter soon.

It would be good for us to touch base to discuss a framework for this letter so we can get started. Please let me know your availability for a call Thurs Oct. 4th-Fri Oct. 12th. (Remember Mon. Oct. 8th is a holiday) so I can set something up.

Thanks!

Allison

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